

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN DAVID DANE,

Plaintiff,

v.

Case No. 22-C-44

OFFICER BRIAN PROFEUCKE, et al.,

Defendants.

DECISION AND ORDER

On January 13, 2022, Plaintiff Steven David Dane, who is currently representing himself, filed this action against Defendants Chief of Police of the City of Berlin Police Department Brian Pulvermacher¹ and the City of Berlin Police Department pursuant to 42 U.S.C. § 1983. On September 1, 2022, Defendants filed a motion to dismiss or, alternatively, to stay all proceedings. After Plaintiff did not respond to the motion and the time to do so had passed, the Court issued an order to show cause for his failure to do so. Plaintiff filed an unsigned letter on September 29, 2022, asserting that the case should not be dismissed. The Court accepts Plaintiff's filing as a response to the motion to dismiss. For the following reasons, Defendants' motion to dismiss will be granted.

Plaintiff alleges that, on October 28, 2021, he was taking his dog for their daily walk on the outskirts of the town of Berlin, Wisconsin. While he was walking, a van approached him at a "high speed" and headed directly toward him. Compl. at 2, Dkt. No. 1. When the van was ten yards away from him, Plaintiff "drew and pointed" his handgun at the van. *Id.* At the "last

¹ Defendants indicate that Brian Profeucke is named incorrectly in this case and that his correct name is Brian Pulvermacher. The Clerk is directed to amend the caption with the correct name.

second,” the van swerved and missed him by near inches. *Id.* Plaintiff continued his walk and “reentered town,” where two squad cars arrived. An officer took Plaintiff’s “handgun and 1 spare mag + ammo,” which Plaintiff claims he had a concealed carry permit for. *Id.* The officer told Plaintiff that he “knew all about” him when he confiscated the firearm, which Plaintiff alleges was a “slander” of his character. *Id.* at 3.

On January 19, 2022, the Green Lake County District Attorney filed two criminal charges against Plaintiff: intentionally pointing a firearm at a person in violation of Wis. Stat. § 941.20(1)(c) and disorderly conduct by use of a dangerous weapon in violation of Wis. Stat. §§ 947.01(1) and 939.63(1)(a). *See Sate v. Dane*, Case No. 2022CM12 (Green Lake Cty., Wis.). The state criminal proceeding is ongoing.

In this case, Plaintiff appears to be suing the Chief of Police and the City of Berlin Police Department under a respondeat superior theory. But this is not a permissible basis for imposing liability under § 1983. *See J.K.J. v. Polk Cty.*, 960 F.3d 367, 377 (7th Cir. 2020). Instead, to be individually liable, a defendant “must be ‘personally responsible for the deprivation of a constitutional right.’” *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001) (quoting *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001)). Plaintiff’s complaint contains no allegations that Pulvermacher was personally involved in the October 28, 2021 events. In addition, the City of Berlin Police Department is not a suable entity under § 1983. *See Best v. City of Portland*, 554 F.3d 698, 698 n.1 (7th Cir. 2009) (“a police department is not a suable entity under § 1983”). Plaintiff has failed to state a claim upon which relief can be granted against these defendants. Therefore, this case is dismissed. Should Plaintiff file a new action against the officers who were personally involved in the incident, the Court advises that it will likely abstain from deciding the

case while Plaintiff's state court proceedings are pending. *See Younger v. Harris*, 401 U.S. 37 (1971).

IT IS THEREFORE ORDERED that Defendants' motion to dismiss (Dkt. No. 20) is **GRANTED**. This case is dismissed. The Clerk is directed to enter judgment accordingly.

Dated at Green Bay, Wisconsin this 3rd day of October, 2022.

s/ William C. Griesbach

William C. Griesbach
United States District Judge